

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In re)	
)	
MARITIME COMMUNICATIONS/LAND	)	EB Docket No. 11-71
MOBILE, LLC	)	File No. EB-09-IH-1751
	)	FRN: 0013587779
Participant in Auction No. 61 and Licensee of)	
Various Authorizations in the Wireless Radio)	
Services)	
)	
Applicant for Modification of Various)	
Authorizations in the Wireless Radio Services)	
)	
Applicant with ENCANA OIL AND GAS (USA),)	
INC.; DUQUESNE LIGHT COPANY; DCP)	
MIDSTREAM, LP; JACKSON COUNTY RURAL	)	Application File Nos.
MEMBERSHIP ELECTRIC COOPERATIVE; PUGET	)	0004030479,
SOUND ENERGY, INC.; ENBRIDGE ENERGY	)	0004144435, 0004193028,
COMPANY, INC.; INTERSTATE POWER AND	)	0004193328, 0004354053,
LIGHT COMPANY; WISCONSIN POWER AND	)	0004309872, 0004310060,
LIGHT COMPANY; DIXIE ELECTRIC	)	0004314903, 0004315013,
MEMBERSHIP CORPORATION, INC.; ATLAS	)	0004430505, 0004417199,
PIPELINE – MID CONTINENT, LLC; DENTON	)	0004419431, 0004422320,
COUNTY ELECTRIC COOPERATIVE, INC., DBA	)	0004422329, 0004507921,
COSERV ELECTRIC; AND SOUTHERN	)	0004153701, 0004526264,
CALIFORNIA REGIONAL RAIL AUTHORITY	)	0004636537, and
	)	0004604962
For Commission Consent to the Assignment of)	
Various Authorizations in the Wireless Radio)	
Services)	
)	

To: Marlene H. Dortch, Secretary
 Filed on ECFS under FCC 12M-43
 Attention: Chief Administrative Law Judge Richard L. Sippel

[Errata Copy with Consolidated Appended Materials*](#)

Warren Havens Comments on FCC 12M-44

Judge Sippel, in multiple statements in Orders ^{and} ~~in~~ on the record in prehearings, acted to limit, bar, revoke, and threaten sanctions for employing, the party rights in this Hearing that the Commission established for myself in the HDO FCC 11-64 (“HDO”). (The rights include

 * I correct errors, attach the appended materials intially separately uploaded on ECFS, and add a service certificate.

presentation of fact^s and arguments, among other things, as meant by the term “party.” It did not mean only the “right” to be a fact provider.) The Commission established said party rights for good cause shown in the years of proceedings that lead to the HDO, including in the “Petitions” cited often in the HDO and recognized by Maritime (I held AMTS license applications, and ^{am}~~are~~ still pursuing some on appeal, I held other licenses in competition with Maritime and affiliates, etc.).¹

There is no hearing rule or other FCC rule that requires an individual party in a formal hearing to participate via an attorney at law. The rule the Judge cited was in regard to an individual representing a legal entity in a formal hearing. While in extreme cases, any party may be barred or curtailed in a formal hearing for serious repeated violations, in my case, the Commission made clear in the HDO that it has a sound basis for making me a party, and the Judge in this Hearing also commented on my beneficial contributions (see Attachment 5, for example). There is no cause for any sanctions, but was cause to allow or even encourage my participation. Muzzling then barring that was prejudicial to me, and in the circumstance I believe, is reversible error.

¹ No party asked the Commission to reconsider the designation in the HDO that I had individual party rights. The Judge does not have authority to reverse the Commission, or second guess it on this designation. (This is especially uncalled for, apart from lacking authority, since the Judge [apparently due to lack of staff support or budget] does not show an understanding of these petitions cited in the HDO, which is apparent, such as by the recent Glossary exercise, and not understanding the Wireless Bureau’s past declaratory rulings on the terms central to issue (g) which were presented in said petitions, and further presented by me in prehearings discussion—but to no avail—and with my “proffer” cut off). I was always a party (accepted by the Wireless Bureau) in all of the proceedings captioned in the HDO that lead to the HDO. Maritime itself challenged Warren Havens’ own licensing actions, and even cited to that in this Hearing. I have other basis for legal standing and party status, also. But that status was decided by the Commission, and ~~the~~ parties and Judge in this case did not lawfully engage in attempting to reverse that, long after the time for a petition for reconsideration of the HDO ~~has~~ passed.

After my multiple attempts over this year to retain party rights, in recent months, the Judge reiterated his decision, and further acted upon it, and stated in a Ruling that I had acted in violation, even willful violation of his Orders that I could not retain and use the party rights the Commission established (I cite these actions and decisions below) ^(see attached, for example). The Judge took these actions at the repeated request of Maritime, Pinnacle and other aligned parties (via their counsel).

Reserving all rights (partly indicated herein), I practically accepted the Judge's last decisions and actions in this ^(see attached, for example) (cited below) since it was futile to further attempt to keep and use party rights, and since the threat of allegation of willful violation of course meant that the Judge could and probably would impose sanctions that would have to be beyond what he already had decided and acted on (the denial of party rights, in fact).

Based thereupon, as I previously informed the Enforcement Bureau (which I had attempted to support before and during this Hearing) ⁾ in matters under this Hearing, that I believe this revocation of party rights is reversible error and I intended to thus undertake appropriate action to seek reversal at any appropriate time. And also based thereupon, I have ^{thereafter} ⁿ not take action in this Hearing.

The first order of business in this Hearing that the Judge undertook was to allow the other parties (but for the Enforcement Bureau and Puget Sound Energy, that is, the Maritime and closely aligned applicants listed in the HDO caption (~~"Maritime and Assignees"~~) affiliates group ⁾ to seek to limit or revoke participation by myself and companies I manage (in this Hearing, initially called together "SkyTel"). See FCC 11M-15 (ALJ, reI. June 16,2011). The HDO that commenced the Hearing made clear that it was these SkyTel parties that were largely responsible for the investigation and presentation of facts and law, over the course of a decade ^{from} ~~(form)~~ before Auction 61) that lead to the HDO and thus the Hearing. Yet, the Judge commenced the Hearing in this way, ^r which is the opposite of what was called for, and eve since has acted to limit, discourage and

ultimately bar the person that was most responsible for the contributions, and that stood ready to and was doing so. contribute to the Hearing. In response to FCC 11M-15, the Enforcement Bureau expressed its views that any such limitation or bar would be improper, would damaged the Bureau's own prosecution of the case, and may well be reversible error. See Attachment 3 hereto.

The Bureau also is concerned that Maritime's and the Proposed Assignees' proposals, if effectuated, could be construed as unwarranted sanctions against Mr. Havens (who has not even been alleged to have engaged in any misbehavior in the course of this hearing) and could form the basis for a finding of reversible error.

I agreed then, and based on the actions of the Judge noted herein, now I believe the limitation, noted herein frustration and the barring of my party rights for is reversible error including reasons the Bureau presented in Attachment 3. I reserve all right to pursue this position and intend to do so. I did not petition for reinstatement of denial of party rights, and the time has passed to do that. I am not seeking here special relief for reinstatement.

I am willing, if I see value to any fair prosecution of the actual issues (which is another matter I don't address here) to participate as a non-party, either upon request by the Judge or the Enforcement Bureau (or possibly other parties), or by filings on ECFS I choose to make (ECFS is public) understanding those may be ignored by the Judge and expecting that (based upon the record of this case to date). However, I believe the course of conduct that repeatedly limited and barred my party rights, and threaten ed sanctions if I continued, caused irreparable injury and cannot be remedied (apart from a new hearing). After this course, I do not have any sound basis to believe that any further attempts to be reinstated as and act as a party will be properly and equitably considered, but I do have a sound basis to believe that such further attempt will lead to further violation of my rights (indicated herein) ~~(explained below)~~ false and suggestions that I was always accorded suitable participation rights and cannot assert reversible error.

I attach ~~here (upload separately)~~ several attachments or exhibits, with some items marked, supporting ~~of~~ points I make herein: the relevance is apparent and need not be restated here. (There are other relevant items, but I am not attempting here to present a whole case, or seek relief.)

As to the issue in FCC 12M-44 regarding whether I have separate interests ~~form~~ from companies I manage that were also, separately, designated as parties in the HDO, I have several comments.

As I present above, the Commission established myself, and each said company, as separate parties, based on a decade of “petitions” cited in the HDO. The Judge lacks the authority to reverse that, or make me or any of these companies loose separate party rights, including by hiring the same attorney.

The Judge has no authority, nor does the Commission, to disrespect corporate existence and distinctions. Those are under State law. The SkyTel legal entities have separate FCC licenses and other assets, ownership (I do not even have any ownership in Environmental LLC directly, and none in Skybridge Spectrum Foundation), and activities. They chose their own legal counsel as they see fit. These distinctions are reflected in their FCC licensing applications, and Forms 602. The Commission has in Orders recognized these distinctions, when Maritime attempted to suggest they be deemed the same. This is part of the record underlying the HDO.

Each of the above companies is a separate business entity under Delaware law. See the State of Delaware online corporate database: <https://delecorp.delaware.gov/tin/GINameSearch.jsp>

I may submit other comments latter. A few follow in summary form.

I have separate financial resources and time from ^{what} ~~the (full time)~~ I commit to managing ^{and interests in} SkyTel legal entities. I apply that as I chose and did that in this Hearing.

Skybridge Spectrum Foundation is a non-profit entity. It is managed by me. Under law, it cannot ^{be} ~~managed~~ ^{for} ~~or~~ undertake commercial activity and has clearly separate “interests” from the for-profit companies I manage, and myself personally.

Each of the above Skytel-O and Skytel-H entities has their own unique FCC Registration Number and IRS Federal Employer Identification Number.

FCC Ownership reports can be viewed for each of the above entities at:

<https://fjallfoss.fcc.gov/coresWeb/simpleSearch.do;jsessionid=QrdNWnPXqGvzQ8LVIXkC03yYnL3vjQHt9XPqMP7p2p0pKwy8913!1472010659!-1742122572>

Corporate law in the country and in State of Delaware has been in existence ^{for centuries} ~~and~~ is not subject to FCC jurisdiction in terms of creating and maintaining legal entities under state law.

Legal entities are created to limit the economic assets and actions and liability of the contributors and owners. Even if one individual fully owns a corporate entity, there is still an entirely clear legal distinction.

~~Apparently, the Judge (“ALJ”) believes that holding licenses or acting through a legal entity gives him the authority to determine whether a legal entity’s manager has pro se rights as a separate, individual party. However, under FCC rules, the ALJ does not have that authority. It was already decided in the HDO by the Commission that “each” Skytel entity is a party and so is Warren Havens, as supported by the Enforcement Bureau’s consolidated comments filed on July 21, 2011 noting that Havens’ exclusion could be reversible error. That was a Commission determination. ALJ does not have authority to make an inquiry about or determination contrary to the HDO findings.~~

Respectfully submitted,

/ s /
Warren Havens

DATED: October 2, 2012

2649 Benvenue Avenue
Berkeley CA 94704
510.484.7797

Original 8/68

TRANSCRIPT OF PROCEEDINGS

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of:

Maritime Communications/Land Mobile, LLC et
al.

EB Docket No. 11-71

For commission consent to assignment of various
authorizations in wireless radio service

DATE OF HEARING: August 1, 2012 VOLUME: 6

PLACE OF HEARING: WASHINGTON, D.C. PAGES: 676-820

NEAL R. GROSS & CO., INC.
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Before the
Federal Communications Commission
Washington, D.C. 20554

-----) EB Docket
In the Matter of:) No. 11-71
)
MARITIME COMMUNICATIONS/LAND,) File No.
MOBILE, LLC) EB-09-
) IH-1751
Participant in Auction No. 61)
and Licensee of Various) FRN:
Authorizations in the Wireless) 0013587779
Radio Services)
) Application
Applicant for Modification of) File Nos.
Various Authorizations in the) 0004030479
Wireless Radio Services) 0004144435
) 0004193028
Applicant with ENCANA OIL AND) 0004193328
GAS (USA), INC.; DUQUESNE LIGHT) 0004354053
COMPANY; DCP MIDSTREAM, LP;) 0004309872
JACKSON COUNTY RURAL MEMBERSHIP) 0004310060
ELECTRIC COOPERATIVE; PUGET) 0004314903
SOUND ENERGY, INC.; ENBRIDGE) 0004315013
ENERGY COMPANY, INC.;) 0004430505
INTERSTATE POWER AND LIGHT) 0004417199
COMPANY; WISCONSIN POWER AND) 0004419431
LIGHT COMPANY; DIXIE ELECTRIC) 0004422320
MEMBERSHIP CORPORATION, INC.;) 0004422329
ATLAS PIPELINE-MID CONTINENT,) 0004507921
LLC; DENTON COUNTY ELECTRIC) 0004153701
COOPERATIVE, INC., DBA COSERV) 0004526264
ELECTRIC; AND SOUTHERN) 0004636537
CALIFORNIA REGIONAL RAIL) 0004604962
AUTHORITY)
)
For Commission Consent to)
the Assignment of Various)
Authorizations in the)
Wireless Radio Service)
-----)

VOLUME VI Wednesday, August 1, 2012

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ORIGINAL

HEARING LOCATION:

Room A, TW A-363
FCC Headquarters
445 12th Street, S.W.
Washington, D.C.

The above-entitled matter came on for
prehearing conference, pursuant to notice, at
10:00 a.m.

BEFORE:

THE HONORABLE RICHARD L. SIPPEL
Chief Administrative Law Judge

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1 JUDGE SIPPEL: Okay. Yes, because
2 after Friday I've got nobody to blame.

3 All right. Anything else on the
4 speakerphone?

5 MR. HAVENS: Yes, sir.

6 JUDGE SIPPEL: Mr. Havens again?

7 MR. HAVENS: Yes. I would like
8 the opportunity to raise an issue with regard
9 to an FCC rule, 80.471. It is a rule under
10 Part 80 with regard to public coast stations'
11 filings of applications for permission to
12 discontinue. Now that rule is on the books.
13 It applies to public coast. NTS is public
14 coast. There was forbearance granted years
15 ago of that rule because public coast stations
16 are deemed to be CMRS and the Commission has
17 issued forbearance with regard to CMRS
18 entities having to submit applications to
19 discontinued service.

20 However, Maritime has stated to
21 the FCC in its request for a \$1.3 million
22 refund of universal service fees paid by its

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1 predecessor entity Watercom that Maritime
2 discontinued interconnection many years ago,
3 and on that basis it sought a refund of the
4 universal service fees paid as CMRS entities.

5 Now, you know, it's -- if Maritime
6 has stated and it's -- clearly that these
7 stations are not interconnected; now I believe
8 it reaffirmed that in responses to the
9 Enforcement Bureau's discovery, then these
10 stations by FCC definition under 20.3 are not
11 CMRS stations. And if they're not CMRS
12 stations, then they are not entitled to
13 forbearance and therefore Maritime has to have
14 files under 80.471, application to
15 discontinue, because it has discontinued
16 operations at a large portion of these
17 stations. So I'm raising that as an important
18 issue with regard to issue G.

19 JUDGE SIPPEL: Anybody have a
20 comment on that?

21 MR. KELLER: I think we've gone --
22 even assuming we hadn't been there before,

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1 we've certainly going beyond collecting
2 factual information. We're into legal
3 arguments and inferences and results to be
4 drawn from legal arguments.

5 JUDGE SIPPEL: Oh, I'm not sure
6 what it is. If you've got something to
7 comment on -- if you're going to present a
8 legal argument, present it through counsel,
9 please.

10 MR. HAVENS: Well, Your Honor, I
11 think the only question is on a fact basis;
12 and perhaps I --

13 JUDGE SIPPEL: All right.

14 MR. HAVENS: -- erred here in not
15 presenting it more as a fact -- that I believe
16 it's relevant. I think the fact of whether or
17 not Maritime alleges to have submitted to the
18 Bureau directly or indirectly in some way
19 applications to discontinue -- whether it has
20 or has not. Now if it has, then, you know,
21 the legal issue surrounding 80.471 is one
22 thing. If it has not, if it says it has never

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1 submitted any applications to discontinue,
2 then of course there's a different way to look
3 at how 80.471 may apply.

4 JUDGE SIPPEL: Okay. Well, do
5 this, if you will then, unless I get an
6 objection here, after this additional
7 information statement is submitted by Mr.
8 Keller, you know, the one we've been talking
9 about here, expanding the -- well, you know
10 what it's about. After that is filed and
11 circulated, within 10 days you can file -- I
12 would just call it the statement of -- Havens'
13 statement, Warren Havens' statement, that's
14 it, on whatever the subject matter is. And
15 that's it. And then you can write a
16 statement. And for what it's worth, just lay
17 out what it is, the facts as you see it of
18 what it is that you're talking about.

19 MR. HAVENS: I appreciate that.

20 JUDGE SIPPEL: Is that okay?

21 Anybody have an objection to that? Mr.

22 Plache?

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1 MR. PLACHE: This whole
2 conversation; I don't know whether it's
3 factual testimony, it's not under oath that
4 Mr. Havens is giving. He's getting into areas
5 that are not covered in the hearing
6 designation order, this issue about whether
7 Maritime should get money back, or previous
8 payments that were made into the ULS fund. I
9 just don't see how it's even related to what
10 we're doing here.

11 JUDGE SIPPEL: Mr. Jackson?

12 MR. JACKSON: I think it is
13 relevant. I mean, I think what Mr. Havens is
14 suggesting is that the question is are these
15 stations operating? And one question would be
16 have they filed any applications to
17 discontinue service.

18 JUDGE SIPPEL: Circumstantial
19 evidence.

20 MR. JACKSON: Circumstantial
21 evidence. I mean, it's more evidence on issue
22 G. I think it is relevant. Then to be given

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1 the weight that Your Honor deems it's to be
2 given.

3 JUDGE SIPPEL: Okay. Bureau? Do
4 you think it's worth it?

5 MS. KANE: I'm not really sure I
6 understand. I think I understood Mr. Jackson
7 much more than I understood where Mr. Havens
8 was heading with this. But obviously in terms
9 of discovery purposes, if there's information
10 that Maritime has as to whether they filed
11 applications for discontinuance, that would be
12 highly relevant, but I thought we'd been
13 asking for that since February.

14 JUDGE SIPPEL: Whoa, whoa, whoa.
15 You're taking me into two different worlds.
16 You think that it is conceivably possible
17 circumstantial evidence?

18 MS. KANE: Yes.

19 JUDGE SIPPEL: Of the status of
20 the stations? That's all?

21 MS. KANE: Yes.

22 JUDGE SIPPEL: Okay. All right.

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1 MS. KANE: If such applications
2 exist.

3 JUDGE SIPPEL: All right. Let's
4 stop there. I'm going to let Mr. Havens
5 submit it, but he has to submit it through
6 counsel. In other words, you work with
7 counsel. I'm sure you're going to do most of
8 the work, Mr. Havens, but it's got to come in
9 through counsel, you know, as an appropriate
10 pleading.

11 I don't know what you want to call
12 it, Mr. Jackson, but give it some kind of a
13 pleading title.

14 MR. JACKSON: Yes, Your Honor.

15 JUDGE SIPPEL: And then parties
16 can do what they will with it, if they want to
17 respond. Again, this is not evidence. This
18 is nothing conclusive here. I consider it to
19 be, you know, well, basically leads in
20 discovery. That's basically it. But let's
21 see what you come up with.

22 Mr. Plache again? Sir? Mr.

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1 Plache, were you looking to say something?

2 MR. PLACHE: So this isn't
3 considered testimony, it's not considered
4 evidence, the whole discussion?

5 JUDGE SIPPEL: No, it's not.

6 MR. PLACHE: Okay.

7 JUDGE SIPPEL: But, no, the
8 concept of a lead, you know? I mean, it's
9 something like a Joe Friday thing, I guess,
10 maybe, or a --

11 MR. PLACHE: It sounded as if
12 there hasn't been a filing showing
13 discontinuance of stations.

14 JUDGE SIPPEL: I have no idea
15 right now on any specific station what your
16 point is. I mean, and I understand what
17 you're saying, but I don't know for a fact.
18 That's what Mr. Keller's going to be doing, I
19 hope.

20 MR. PLACHE: Okay.

21 MR. CATALANO: Your Honor?

22 JUDGE SIPPEL: Yes, sir? Will you

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1 again --

2 MR. CATALANO: Mr. Catalano
3 representing Pinnacle also.

4 JUDGE SIPPEL: Yes, sir?

5 MR. CATALANO: Just to clarify the
6 record, I would ask you to strike Mr. Havens'
7 statement. Let him submit anything he wants
8 to submit through counsel by way of affidavit
9 and then everybody can have an opportunity to
10 respond to that. It was hard to follow that,
11 at least.

12 And secondly, we don't believe Mr.
13 Havens should be continuing to represent
14 himself in this proceeding. You've previously
15 made a ruling that he had to obtain counsel
16 and he has obtained counsel, but he's also
17 continued to represent himself. And would
18 direct you to FCC case law where the
19 Commission has adopted the federal courts'
20 policy on this basically where a party either
21 represents himself pro se or has counsel
22 representing him, but not both. And we can

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1 direct you to that case law, if you'd like.

2 And it's very confusing.

3 JUDGE SIPPEL: Are these the cases
4 that you submitted today? I got a copy of a
5 case from somebody.

6 MR. KELLER: I submitted today
7 probably the same cases he's referring to, or
8 at least cases that say not only that, but
9 also talk directly about the situation where
10 the parties attempting to represent himself
11 pro se while having counsel represent an
12 entity which had a common interest. And the
13 court ruling said you have to choose on or the
14 other. You have to name your poison. And the
15 FCC has adopted that. It's Black Television
16 Workshop of Los Angeles.

17 JUDGE SIPPEL: Well, you've got to
18 admit it's pretty clever.

19 MR. CATALANO: Just a brief little
20 bit, Your Honor?

21 JUDGE SIPPEL: No, I'm going to
22 grant your motion. I think you're right.

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1 He's been basically acting in violation of my
2 instruction and for that reason alone I'm
3 going to strike it. But it's going to come in
4 -- I'm not excluding it, obviously, if it
5 comes in the right way. So your motion is
6 granted. That's it.

7 MR. CATALANO: Thank you.

8 JUDGE SIPPEL: You got anything
9 else, Mr. Havens?

10 MR. HAVENS: Your Honor, I would
11 ask to clarify. What is that I, Warren
12 Havens, a pro se party in the hearing can and
13 cannot do?

14 JUDGE SIPPEL: Well, as far as the
15 Commission rules are concerned, I think you
16 can't do anything except be a witness, and
17 you're really not -- that's a open question,
18 too, in light of the way that you're -- but,
19 look, I don't want to dissuade you from
20 providing useful information, or any
21 information that may not be so useful. But
22 the point is that you still haven't gotten it

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1 straightened out with your legal
2 representation. And it's hard for me to
3 believe that you can't do that because --

4 MR. HAVENS: Well, Your Honor,
5 respectfully, I have made it very clear that
6 Mr. Jackson represents the three entities he
7 identified at the --

8 JUDGE SIPPEL: I know that. I
9 know that. But what --

10 MR. HAVENS: But I am an
11 individual party in the hearing as the
12 Commission stated in the hearing designation
13 order.

14 JUDGE SIPPEL: I know, but they
15 expect you -- go ahead. They expect you to be
16 a party represented by counsel under the
17 rules.

18 MR. HAVENS: Well, Your Honor, I
19 respectfully have submitted in the past to you
20 that as pro se I'm entitled under the
21 Constitution to represent myself. And are you
22 making a decision that I cannot represent

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1 myself as a party in this hearing but for
2 giving facts? Is that your decision?

3 JUDGE SIPPEL: Well, I'm going to
4 do it again. I'll take a look at these case
5 authorities that the counsel has given me and
6 I will reconsider it again with a view towards
7 making it very clear as to what your
8 obligations are. I'm not going to be
9 frightened by some claim of Constitutional
10 rights to represent yourself. You know, we're
11 in a different -- we're in the corporate
12 world, you know?

13 MR. HAVENS: No, no.

14 JUDGE SIPPEL: This is when Bain
15 steps in and straightens everything out.

16 MR. HAVENS: And, Your Honor --

17 JUDGE SIPPEL: Don't --

18 MR. HAVENS: -- I'm talking about
19 representing myself, not a corporation. The
20 Commission designated me individually --

21 JUDGE SIPPEL: Well, you're
22 designated because I -- if I'm reading it

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1 right, they think that maybe you might be
2 helpful. You're not in as a party who's
3 suspected of doing something wrong.

4 MR. HAVENS: Well, Your Honor,
5 respectfully, the Commission in the hearing
6 designation order did not say that Warren
7 Havens is designated as a party solely to give
8 facts. It simply said I'm a party. And I was
9 a party --

10 JUDGE SIPPEL: Yes, you can be a
11 party. I'm sorry to cut you off on that. You
12 can be a party, and you should feel proud that
13 you have been appointed a party, because
14 usually you have to file a motion to intervene
15 at some point. But they did it right up front
16 for you. The problem is you as a person are
17 really part of all these corporations and you
18 need a lawyer to represent corporations.
19 That's what the law provides for.

20 MR. HAVENS: I am different
21 from --

22 JUDGE SIPPEL: Well, I know you're

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1 different, but that's not what the law says.
2 Now I'll explain it to you because I can't do
3 this anymore over the phone. I'm not trying
4 to cut you off and I appreciate all the energy
5 that you're bringing into this case, but it's
6 got to be done the right way if you want to
7 have it listened to, or heard.

8 MR. HAVENS: I'm seeking
9 clarification.

10 JUDGE SIPPEL: You're going to get
11 it. You're going to get it.

12 MR. HAVENS: Then that's what I'm
13 looking for. Then I'll deal with that.

14 JUDGE SIPPEL: You know how I feel
15 about requests for clarification, but you're
16 going to get it. Okay? I promise you.

17 MR. HAVENS: If you don't want to
18 issue that, that's fine, but --

19 (Laughter.)

20 MR. HAVENS: -- Pinnacle brought
21 up this question.

22 JUDGE SIPPEL: You're right.

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1 You're absolutely -- everything -- you're
2 right on all score, except you're not right
3 that you're not in violation of the rule. And
4 I'm going to explain why.

5 MR. HAVENS: All right. I don't
6 want to get into an argument. I don't want to
7 accuse you of anything. I don't want to hold
8 it against you, hopefully, and I want to just
9 move this case forward. And you've done very
10 well and thank you very much. Okay? That's
11 it, Mr. Havens. You'll hear from me.

12 Anybody else have anything else?
13 No? Yes, Mr. Jackson?

14 MR. RICHARDS: Yes, very briefly,
15 Your Honor, if I may.

16 JUDGE SIPPEL: Mr. Richards. Mr.
17 Richards, is that right?

18 MR. RICHARDS: Yes, Your Honor,
19 Jack Richards. I'd just like to note for the
20 record that our clients Enbridge, Encana,
21 Jackson County, Canaxis, Atlas Pipeline, along
22 with Mr. Catalano and Mr. Plache's client

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Subject: Ruling on Requested Deletion of Counsel from Service List

Date: Wednesday, August 8, 2012 11:48:50 AM PT

From: Mary Gosse <Mary.Gosse@fcc.gov>

To: Albert J. Catalano <ajc@catalanoplache.com>, Brian Carter <Brian.Carter@fcc.gov>, Charles A. Zdebski <czdebski@eckertseamans.com>, Eric J. Schwalb <eschwalb@eckertseamans.com>, Gary Schonman <Gary.Schonman@fcc.gov>, Harry F. Cole <cole@fhhlaw.com>, Howard M. Liberman <Howard.Liberman@dbi.com>, Jack Richards <richards@khilaw.com>, Jeffrey L. Sheldon <jsheldon@fr.com>, Jimmy Stobaugh <jstobaugh@telesaurus.com>, Joshua S. Turner <jturner@wileyrein.com>, Kurt E. DeSoto <kdesoto@wileyrein.com>, Laura H. Phillips <Laura.Phillips@dbi.com>, Matthew J. Plache <mjp@catalanoplache.com>, Pamela Kane <Pamela.Kane@fcc.gov>, Patricia J. Paoletta <tpaoletta@wiltshiregrannis.com>, Patrick R. McFadden <Patrick.McFadden@dbi.com>, Paul J. Feldman <feldman@fhhlaw.com>, Robert J. Jackson <rhj@commilawgroup.com>, Robert J. Keller <rjk@telcomlaw.com>, Robert J. Miller <rmiller@gardere.com>, Robert M. Gurss <gurss@fhhlaw.com>, Tamir Damari <tdamari@nossaman.com>, Terry Cavanaugh <Terry.Cavanaugh@fcc.gov>, Warren C. Havens <warren.havens@sbcglobal.net>, Wes Wright <wright@khilaw.com>

CC: Richard Sippel <Richard.Sippel@fcc.gov>, Austin Randazzo <Austin.Randazzo@fcc.gov>

EB Docket No. 11-71

Maritime Communications/Land Mobile

Attention: Mr. Stobaugh and Mr. Havens

Mr. Stobaugh:

This is in response to your e-mail dated 7/31/2012 on behalf of Warren Havens and his corporate parties, requesting the deletion of appearing counsel names: Patrick McFadden, Laura Phillips and Howard Liberman of Drinker Biddle & Reath LLP, and Tamar Damari of the Nossaman Firm.

Chief Judge Sippel will not be ruling on your request at this time for the following reasons.

First, it is not clear how you might be in privy with Mr. Havens, whether or not you are a licensed attorney, or by what authority you make your request to the Presiding Judge.

Second, the history of non-compliance of SkyTel and Mr. Havens with FCC rules regarding corporate representation by counsel is documented in the record of this docketed FCC proceeding: EB Docket No. 11-71 *Maritime Communications/Land Mobile, LLC, et al.*

- ▶ Order (12M-4), released January 24, 2012
- ▶ Order (12M-7), released January 27, 2012
- ▶ Order (12M-12), released March 7, 2012, footnote 2
- ▶ Order (12M-16), released March 9, 2012
- ▶ Order (12M-17), released March 9, 2012
- ▶ Addendum to Order (12M-22), released April 11, 2012, footnote 1
- ▶ Letter from Robert H. Jackson dated May 18, 2012 indicating the companies represented by Mr. Jackson (Environmental, LLC, Intelligent Transportation and Monitoring Wireless, LLC and Verde Systems, LLC) and those thought to be represented by Mr. Havens, who is not a licensed attorney, and/or Mr. Stobaugh (Skybridge Spectrum Foundation, Telesaurus Holdings GB LLC, V2G LLC and Warren Havens personally).
- ▶ Order (12M-25), released May 21, 2012

Third, until compliance by the Havens parties and agents with bench rulings, and until Mr. Havens obtains counsel for himself and all related entities, there can be no directive from the Presiding Judge as case manager (47 C.F.R. §1.243(f)) to remove names of counsel who have appeared in this case on behalf of Mr. Havens and his corporations from the OALJ's distribution list for this proceeding.

IT IS NOTED that at the present time, Mr. Havens is in violation and even willful contempt of Commission rules

and the Presiding Judge's orders requiring counsel, *supra*. Mr. Havens was given a last chance for revisiting this question in the Presiding Judge's discretion in a bench ruling at the Prehearing Conference of August 1, 2012 (awaiting transcript). However, in order for Mr. Havens' pleading relating to the question to be considered, the pleading MUST (1) be in proper pleading format (see 47 C.F.R. §§1.48-1.52) and (2) be filed with the prescribed number of copies in the Commission's Office of the Secretary (see 47 C.F.R. §1.51(e).; <http://www.fcc.gov/guides/how-file-paper-documents-fcc>).

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

FILED/ACCEPTED

JUL 21 2011

Federal Communications Commission
Office of the Secretary

In re)	
)	
MARITIME COMMUNICATIONS/LAND	)	EB Docket No. 11-71
MOBILE, LLC	)	File No. EB-09-IH-1751
	)	FRN: 0013587779
Participant in Auction No. 61 and Licensee of)	
Various Authorizations in the Wireless Radio)	
Services)	
)	
Applicant for Modification of Various	)	Application File Nos. 0004030479,
Authorizations in the Wireless Radio Services	)	0004144435, 0004193028, 0004193328,
	)	0004354053, 0004309872, 0004310060,
Applicant with ENCANA OIL AND GAS (USA),	)	0004314903, 0004315013, 0004430505,
INC.; DUQUESNE LIGHT COMPANY; DCP	)	0004417199, 0004419431, 0004422320,
MIDSTREAM, LP; JACKSON COUNTY	)	0004422329, 0004507921, 0004153701,
RURAL MEMBERSHIP ELECTRIC	)	0004526264, 0004636537,
COOPERATIVE; PUGET SOUND ENERGY,	)	and 0004604962
INC.; ENBRIDGE ENERGY COMPANY,)	
INC.; INTERSTATE POWER AND LIGHT)	
COMPANY; WISCONSIN POWER AND)	
LIGHT COMPANY; DIXIE ELECTRIC)	
MEMBERSHIP CORPORATION, INC.;)	
ATLAS PIPELINE – MID CONTINENT, LLC;)	
DENTON COUNTY ELECTRIC)	
COOPERATIVE, INC. , DBA COSERV)	
ELECTRIC; AND SOUTHERN CALIFORNIA)	
REGIONAL RAIL AUTHORITY)	

To: Marlene H. Dortch, Secretary
Attention: Chief Administrative Law Judge Richard L. Sippel

ENFORCEMENT BUREAU'S CONSOLIDATED COMMENTS
ON
PROCEDURES FOR THE PARTICIPATION OF MR. HAVENS

1. By Order, FCC 11M-15 (ALJ, rel. June 16, 2011), the Presiding Judge established a procedural schedule for, among other things, the filing of pleadings related to the future

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participation in this hearing of Warren Havens and several entities he controls.¹ Specifically, the Presiding Judge directed the Enforcement Bureau (“Bureau”) to submit its consolidated comments on filings by (a) Maritime Communications/Land Mobile, LLC (“Maritime”);² (b) by the proposed assignees in applications that were designated for hearing in this case;³ and (c) by Mr. Havens.⁴ The Bureau hereby submits its consolidated comments.

2. By way of background, the Commission commenced the above-captioned hearing proceeding with its release of *Maritime Communications/Land Mobile, LLC*, Order to Show Cause, Hearing Designation Order, and Notice of Opportunity for Hearing, EB Docket No. 11-71, FCC-11-64, rel. April 19, 2011 (“HDO”). The HDO raised material and substantial questions about the qualifications of Maritime to be and remain a Commission licensee. The HDO also designated for hearing a number of pending assignment applications in which Maritime was the proposed assignor. As a consequence and as required by statute,⁵ the HDO afforded the Proposed Assignees full party status because of their direct interest in the disposition of these applications.

3. The HDO observed that Mr. Havens also had a direct interest in the disposition of the pending assignment applications – and thus was a party-in-interest in the instant hearing –

¹ These consist of Environmental LLC, Intelligent Transportation and Monitoring Wireless LLC, Skybridge Spectrum Foundation, Telesaurus Holdings GB LLC, Verde Systems LLC and V2G LLC (collectively, “Mr. Havens”).

² See Motion Proposing Procedures for Participation of the Petitioner Parties, filed on June 29, 2011, by Maritime (“Motion”).

³ See Comments on Maritime’s Motion, filed on July 8, 2011, by Atlas Pipeline Mid-Continent, LLC, DCP Midstream, LP, Denton County Electric Cooperative, Inc. d/b/a CoServ Electric, Dixie Electric Membership Corporation, Inc., Duquesne Light Company, Enbridge Energy Company, Inc., EnCana Oil & Gas (USA) Inc., Interstate Power & Light Company, Jackson County Rural Electric Membership Cooperative, Southern California Regional Rail Authority, and Wisconsin Power and Light Company (collectively, “Proposed Assignees”).

⁴ See Opposition to Maritime’s Motion, filed on July 14, 2011, by Mr. Havens.

⁵ See Section 309(e) of the Communications Act of 1934, as amended (“Act”), 47 U.S.C. § 309(e).

because he had petitioned to deny the applications. Accordingly and as required by statute,⁶ the Commission ordered that each entity controlled by Mr. Havens “shall be made parties to this hearing in its capacity as a petitioner to one or more of the captioned applications.”⁷ In affording Mr. Havens and the Proposed Assignees the opportunity to participate in the instant hearing, the Commission did not differentiate their status, rights, and obligations as parties from those of any other party in the case, including the Bureau and Maritime. Indeed, the Commission did not distinguish one party from another or limit in any way the participation of any particular party in any phase of the hearing.

4. Nevertheless, both Maritime and the Proposed Assignees request that the Presiding Judge take the extraordinary action of imposing significant restrictions on Mr. Havens’ capacity to exercise his rights as a party in this case. Specifically, they have proposed severe limitations on Mr. Havens’ ability to take discovery, to submit direct case exhibits, to participate in the trial, and to offer proposed findings of fact and conclusions of law. As discussed below, the Bureau believes that the proposals to limit Mr. Havens’ participation could adversely impact the Bureau’s ability to obtain timely discovery, to build a complete record, and to prepare its case for hearing. Accordingly, the Bureau opposes efforts to curtail Mr. Havens’ participation or to effectively create a tiered party mechanism in this hearing.⁸

Mr. Havens’ Participation In The Discovery Process

5. During the pre-hearing conference, the Presiding Judge refused to segregate issue (j) in the HDO – essentially nothing more than an issue of law – from other issues in the HDO

⁶ *Id.*

⁷ See HDO at ¶ 72.

⁸ The Bureau also is concerned that Maritime’s and the Proposed Assignees’ proposals, if effectuated, could be construed as unwarranted sanctions against Mr. Havens (who has not even been alleged to have engaged in any misbehavior in the course of this hearing) and could form the basis for a finding of reversible error. Any remand of this case would necessarily delay the outcome of the hearing, a result manifestly inconsistent with the public interest.

for the purposes of discovery.⁹ Nonetheless, Maritime proposes a “modified bifurcation” that limits Mr. Havens’ written discovery requests and deposition questioning to just issue (j). Stated otherwise, Mr. Havens would be limited to discovery directed only to the issue of whether, “in light of the foregoing issues . . . the captioned applications filed by or on behalf of [Maritime] should be granted.”¹⁰ The Proposed Assignees support Maritime’s proposal, arguing that Mr. Havens has “no right to seek discovery of the Applicants” relating to any other issues in the HDO.¹¹ Maritime’s proposal is premised on its mistaken interpretation of the HDO as “clearly” limiting the scope of both Mr. Havens’ status and participation to issue (j).¹² Maritime does not cite to any language in the HDO that supports a “clear” limitation – or any limitation, for that matter – of Mr. Havens. Furthermore, neither Maritime nor the Proposed Assignees cite to any language in the HDO or to any Commission Rule that deprives Mr. Havens of the full rights enjoyed by any other party in this proceeding.

6. Instead, Maritime and the Proposed Assignees appear to rely solely on the Presiding Judge’s authority under Section 1.243(f) of the Commission’s Rules to “[r]egulate the course of the hearing,” and to exclude any person engaging in contemptuous or disruptive conduct; his authority under Section 1.243(i) to dispose of procedural matters; and his authority under Section 1.311(c)(3) to determine the use of discovery procedures. While the Presiding Judge unquestionably has discretion over the course of this hearing and may impose sanctions on parties for disruptive behavior, neither Maritime nor the Proposed Assignees provide any legal

⁹ See, e.g., Transcript of Pre-Hearing Conference, dated June 15, 2011, at pp. 53-55, 59-60, and 63-66.

¹⁰ See HDO at ¶ 62(j).

¹¹ See Proposed Assignees’ Comments on Maritime’s Motion at 2. To the extent that both Maritime and the Proposed Assignees wish to have the pending applications granted, they are ideologically aligned in this hearing. Thus, it is not surprising that Maritime and the Proposed Assignees would concur in any efforts to curtail or forestall Mr. Havens from participating fully in this hearing.

¹² See Motion at 2-3.

justification for how any of the Commission Rules on which they rely authorize the Presiding Judge to preclude entities whom the Commission has afforded full party status from fully participating in the hearing. Indeed, pursuant to Section 1.243(f), the Presiding Judge's authority to remove any party from the hearing (and otherwise restrict their full participation therein) is limited to only those circumstances where the party is "engaging in contemptuous conduct or [is] otherwise disrupting the proceedings."¹³ Mr. Havens has been accused of no such conduct or disruption here. For these reasons, the Bureau respectfully requests that the Presiding Judge reject Maritime's proposal to limit Mr. Havens' discovery requests to issue (j).¹⁴

7. Maritime's and the Proposed Assignees' apparent concerns about duplicative discovery by Mr. Havens are exaggerated and without merit. As is customary in any multi-party hearing, it is incumbent upon all of the parties to coordinate with each other in conducting discovery to ensure that this important phase of the hearing is carried out efficiently and is not overly burdensome. Indeed, in this regard, the Bureau has always intended to coordinate with Mr. Havens and other parties concerning the taking of depositions, including the selection of mutually agreed-upon dates, the order of examination, and the questioning of witnesses. Placing restrictions on a party's ability to conduct legitimate discovery, however, goes too far.

8. Maritime's proposal that a party answering discovery requests be allowed to submit a consolidated response that covers both the Bureau's initial requests and any additional, yet non-duplicative requests Mr. Havens may serve within seven days after the Bureau's requests is unmanageable, unnecessary, and contrary to the public interest.¹⁵ If Maritime's proposal were effectuated, the Bureau would not receive responses to its written discovery requests until at least

¹³ 47 C.F.R. § 1.243(f).

¹⁴ On these same grounds, the Presiding Judge should also reject Maritime's proposal to restrict Mr. Havens' ability to question trial witnesses, introduce direct case exhibits and testimony, and submit proposed findings and conclusions of law about any issues other than those relevant to issue (j). See Motion at 5.

¹⁵ See Motion at 3-4.

seven days after the time otherwise allowed by the Commission's Rules. There is absolutely no basis – and Maritime offers none – for denying the Bureau a timely response to discovery requests it has properly served. Indeed, if the discovery requests are not duplicative, as they should not be, there is no efficiency gained by allowing Maritime or any other party to serve a delayed joint response.¹⁶ Any delay in receiving Maritime's or the Proposed Assignees' responses to the Bureau's discovery requests necessarily would impede the Bureau's ability to serve additional discovery or to take depositions that rely on such responses. Thus, with just under six months left in the discovery period (which include the Thanksgiving, Christmas and New Year holidays), imposing an additional seven-day delay, at a minimum, for each written discovery request the Bureau serves will seriously jeopardize its ability to build a thorough record within the proscribed discovery period. Accordingly, the Bureau requests that the Presiding Judge reject Maritime's proposal.¹⁷

9. The Presiding Judge should also reject the Proposed Assignees' suggestion that Mr. Havens submit his written discovery requests to the Bureau for consideration, and if the Bureau deems such requests appropriate, the Bureau should then pursue the discovery. The Commission's Rules specifically leave to the presiding officer the responsibility of determining the appropriateness of any parties' discovery requests.¹⁸ Allowing the Bureau to act as a "filter" on Mr. Havens' discovery would essentially place the Bureau in the position of usurping rights

¹⁶ Moreover, Maritime has already sought a nearly three and a half week extension for responding to just the Bureau's interrogatories and document requests. *See* Maritime's Motion for Extension of Time to Respond to the Enforcement Bureau's Initial Discovery Requests, filed July 15, 2011. If Maritime is faced with responding to multiple sets of discovery requests at one time, how many more such motions for extension should we expect it to file?

¹⁷ There is no basis for restricting the Bureau's access to legitimate discovery. Indeed, there is nothing in the record to suggest that the Bureau has exceeded – or will exceed – its authority under Section 1.311 of the Commission's Rules, 47 C.F.R. § 1.311, to seek discovery of those matters which are relevant to any of the issues designated for hearing or which appear reasonably calculated to lead to the discovery of admissible evidence.

¹⁸ *See, e.g.*, Sections 1.313, 1.315(c), 1.315(d)(2), 1.323(d) and 1.325(a)(2) of the Commission's Rules, 47 C.F.R. §§ 1.313, 1.315(c), 1.315(d)(2), 1.323(d) and 1.325(a)(2).

reserved for the Presiding Judge. Moreover, it places an unnecessary burden on the Bureau, which is preparing its own case, to review Mr. Havens' requests and its own.¹⁹ For these reasons, the Presiding Judge should reject the Proposed Assignees' proposal.

10. The proposed discovery restrictions on Mr. Havens appear to be nothing more than Maritime's and the Proposed Assignees' premature attempt to insulate themselves now from some perceived, if not speculative, burden they believe they may incur later in responding to Mr. Havens' discovery requests. If Maritime and the Proposed Assignees object to the Mr. Havens' discovery requests as somehow overreaching or excessive, the Commission's Rules already provide more than sufficient protections and recourse.²⁰ It is unnecessary for the Presiding Judge to impose draconian limits on Mr. Havens – at the expense of the Bureau's ability to obtain timely discovery responses and develop a thorough record – at this early stage of the proceedings.²¹

Mr. Havens' Participation In the Trial

11. Maritime further suggests that only the Bureau and Maritime should exchange direct case exhibits on February 3, 2012, the date set forth for such exchanges in the Presiding Judge's June 16, 2011 Order, and that within 10 days thereafter – or by February 13, 2012 – both the Proposed Assignees and Mr. Havens may request leave of the Presiding Judge to offer supplemental evidence. This proposal, too, would create a "Rube Goldberg" process that is simply unwarranted. It would mean that none of the parties to the hearing can be sure of the

¹⁹ While the Bureau and Mr. Havens may share some common goals in this case, their interests are for obvious reasons not completely aligned, as Maritime and the Proposed Assignees seem to suggest. Thus, the nature and scope of discovery in which the Bureau and Mr. Havens engage may very well differ.

²⁰ See, e.g., Sections 1.323(b), 1.315 (b) and 1.313 of the Commission's Rules, 47 C.F.R. §§ 1.323(b), 1.315 (b) and 1.313.

²¹ This is especially true in light of the Petitioner Parties' agreement to be limited in the number of interrogatories and depositions it would seek of the Applicant Parties. See Opposition at 10-11.

evidence that will be offered at trial until the Presiding Judge rules on both the Proposed Assignees' and Mr. Havens' motions. This necessarily jeopardizes the parties' ability to meet the February 13, 2012 deadline for Witness Notification and to engage in a meaningful Evidence Admissions Session as scheduled on February 27, 2012. It will also undoubtedly delay the trial date, set to begin on March 20, 2012. Notably, Maritime offers no explanation for why such a multi-step procedure is even necessary or any legal support for imposing such a distinction between Maritime and the Bureau, on the one hand, and Mr. Havens and the Proposed Assignees, on the other. Maritime also fails to substantiate its proposal that only Maritime and the Bureau should fully participate in the actual trial. The primary goal of a trial is to ensure that a full and complete record is established; this can hardly occur if both Mr. Havens and the Proposed Assignees are precluded from participating in anything but a limited role. For these reasons, the Bureau requests that the Presiding Judge also reject these proposals.

The Proposed Assignees' Participation Should Not Be Limited

12. Lastly, it would appear that both Maritime and the Proposed Assignees have used their briefing concerning limits on Mr. Havens as an additional opportunity to argue for limiting the Proposed Assignees' responsibility to respond to discovery *from the Bureau*. In particular, Maritime argues (and the Proposed Assignees apparently agree) that the HDO limits the Proposed Assignees' status and participation to issue (j), suggesting that all parties, including the Bureau, should be precluded from seeking any discovery from the Proposed Assignees concerning any issue other than issue (j).²² Yet, as described above in connection with Mr. Havens, the HDO provides no such limitation. Moreover, the Proposed Assignees already moved for bifurcation and/or protection from discovery seeking this very same limitation – and

²² See Motion at 2-3 and fn 2.

lost.²³ In accordance with the Presiding Judge's instructions at the pre-hearing conference, the Bureau and the Proposed Assignees have already presented competing proposals to the Presiding Judge concerning the scope of discovery the Bureau may serve on the Proposed Assignees.²⁴ Any attempt to circumvent that process here is inappropriate.

13. Based on the foregoing, the Bureau opposes the proposals to limit Mr. Havens' ability to take discovery, to submit direct case exhibits, to participate in the trial, and to offer proposed findings of fact and conclusions of law. Specifically, the Bureau opposes the proposals (i) to limit Mr. Havens' participation in discovery and at trial to only issue (j); (ii) to allow the answering party to submit consolidated responses to written discovery seven days later than would be allowed by the Commission's Rules; (iii) to impose upon the Bureau the responsibility of reviewing Mr. Havens' discovery requests; and (iv) to preclude the full participation of both Mr. Havens and the Proposed Assignees in the pre-trial process and at trial. The Bureau also opposes limiting the Proposed Assignees' discovery obligations, as they pertain to the Bureau's requests, to issue (j).

²³ See, e.g., Transcript of Pre-Hearing Conference, dated June 15, 2011, at pp. 49, 55-56, and 66.

²⁴ See Enforcement Bureau's Status Report Concerning Discovery, filed June 27, 2011, and the Amended Stipulation Status Report, filed on June 30, 2011, by the Proposed Assignees.

Respectfully submitted,

P. Michele Ellison
Chief, Enforcement Bureau

A handwritten signature in cursive script, reading "Pamela S. Kane", written in black ink.

Pamela S. Kane
Deputy Chief
Investigations and Hearings Division
Enforcement Bureau

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July 21, 2011

CERTIFICATE OF SERVICE

Makia Day, an Enforcement Analyst in the Enforcement Bureau's Investigations and Hearings Division, certifies that she has on this 21st day of July, 2011, sent by first class United States mail, copies of the foregoing "ENFORCEMENT BUREAU'S CONSOLIDATED COMMENTS ON PROCEDURES FOR THE PARTICIPATION OF MR. HAVENS" to:

The Honorable Richard L. Sippel
Chief Administrative Law Judge
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554 (by hand, courtesy copy)

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Intelligent Transportation and & Monitoring Wireless; Environmental LLC; and
Skybridge Spectrum Foundation**



Makia Day

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

FCC 12M-38

In the Matter of	)	EB Docket No. 11-71
)	
MARITIME COMMUNICATIONS/LAND	)	File No. EB-09-IH-1751
MOBILE, LLC	)	FRN: 0013587779
)	
Participant in Auction No. 61 and Licensee of)	
Various Authorizations in the Wireless Radio)	
Services)	
	)	Application File Nos.
Applicant for Modification of Various	)	0004030479, 0004144435,
Authorizations in the Wireless Radio Services	)	0004193028, 0004193328,
	)	0004354053, 0004309872,
Applicant with ENCANA OIL AND GAS (USA),	)	0004310060, 0004314903,
INC.; DUQUESNE LIGHT COMPANY, DCP	)	0004315013, 0004430505,
MIDSTREAM, LP; JACKSON COUNTY	)	0004417199, 0004419431,
RURAL MEMBERSHIP ELECTRIC	)	0004422320, 0004422329,
COOPERATIVE; PUGET SOUND ENERGY,	)	0004507921, 0004153701,
INC.; ENBRIDGE ENERGY COMPANY,	)	0004526264, 0004636537,
INC.; INTERSTATE POWER AND LIGHT	)	and 0004604962
COMPANY; WISCONSIN POWER AND)	
LIGHT COMPANY; DIXIE ELECTRIC)	
MEMBERSHIP CORPORATION, INC.;)	
ATLAS PIPELINE-MID CONTINENT, LLC;)	
DENTON COUNTY ELECTRIC)	
COOPERATIVE, INC., DBA COSERV)	
ELECTRIC; AND SOUTHERN)	
CALIFORNIA REGIONAL RAIL)	
AUTHORITY)	
)	
For Commission Consent to the Assignment of)	
Various Authorizations in the Wireless Radio)	
Service)	

ORDER

Issued: August 2, 2012

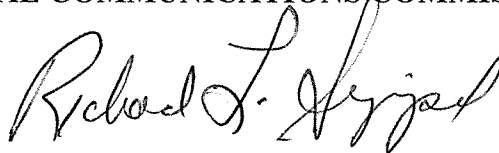
Released: August 2, 2012

In furtherance of Prehearing Conference discussions of August 1, 2012, the following tasks were assigned:

1. Pinnacle to furnish copy of its lease with Maritime.[Done.]

2. In furtherance of completing EB's discovery of Maritime under Issue (g), Maritime is to flush out data on EB's chart (copy attached) which shows only EB's present accounting of Maritime's stations' operating statuses as of August 1, 2012.¹
3. Maritime to provide to Presiding Judge and all parties its Final Amended Disclosure Statement believed to have been filed with the Bankruptcy Court on or about July 30-31, 2012.
4. EB to furnish Presiding Judge *alone* each LOI sent to Maritime (and/or Mobex) and responsive documents received by EB from 2010 to the present.
5. Robert H. Jackson, Esq. to submit a *Status Report* which he will prepare in conjunction with Warren Havens (*fact provider only*) concerning certain geographic and or site licenses referred to directly or by inference in Mr. Warren's stricken on-the-record proffer.²

FEDERAL COMMUNICATIONS COMMISSION³



Richard L. Sippel
Chief Administrative Law Judge

¹ See also Maritime's Report Per Order FCC 12M-36 submitted August 1, 2012. Maritime is to file its related expanded and explanatory document by **August 9, 2012**, which is to be completed in accord with its on-the-record commitment, and which will include identification of known point of contact persons.

² Because Mr. Havens failed to adhere to instructions of Presiding Judge concerning attorney representation in Order FCC 12M-16, his attempted proffer was stricken on Pinnacle's open-court motion, with leave to refile through Havens' counsel, Robert H. Jackson, Esquire, one of Mr. Havens' current attorneys.

³ Courtesy copies of this Order were sent on issuance by e-mail to each counsel and to Mr. Warren Havens.

**MARITIME'S INTERROGATORY DEFICIENCIES ON OPERATING STATUS AS OF 8/1/12 – DISCOVERY
THE ENFORCEMENT BUREAU STILL NEEDS ON ISSUE G**

Category A: Stations For Which Maritime Has Not Provided Any Operational Information

- As to each Call Sign and Location, is it currently operating and offering any type of service?
- As to any Call Sign and Location that is not currently operating, the date operations ceased and the reason why.
- As to each Call Sign and Location, has it been operating and offering any type of service since Maritime's acquisition in 2005? If not, why not?

Call Sign	Frequency
KAE889	3
KAE889	4
KAE889	13
KAE889	20
KAE889	30
KAE889	34
KAE889	48
KAE889	6
KAE889	12
KAE889	22
KAE889	46
WHG702	Block B
WHG703	Block B
WHG708	Block B
WHG709	Block B
WHG710	Block B
WHG712	Block B
WHG714	Block B
WHG715	Block B
WHG719	Block B
WHG720	Block B
WHG721	Block B
WHG723	Block B
WHG725	Block B
WHG726	Block B
WHG733	Block B
WHG734	Block B
WHG735	Block B
WHG737	Block B
WHG741	Block B
WHG743	Block B
WHG746	Block B
WHG750	Block B

Call Sign	Frequency
WHG751	Block B
WHG752	Block B
WHV733	1
WHV733	2
WHV733	3
WHV740	2
WHV843	1
WHV843	5
WHV843	6
WRV374	12
WRV374	15
WRV374	25
WRV374	39
WRV374	14
WRV374	18
WRV374	26
WRV374	33
WRV374	35
WRV374	40
WRV374	8
WRV374	16
WRV374	19
WRV374	20
WRV374	22
WRV374	23
WRV374	31
WRV374	34

Category B: Stations For Which Maritime Has Not Provided any Reasons for Service Interruption or Confirmed Earlier Operation

- Was this facility operating and offering any type of service between Maritime's acquisition in 2005 and the Service Suspension Date? If so, what were the dates of operation? If not, why not?
- Why did operations cease by the Service Suspension Date?
- Have operations resumed? If not, why not?

Call Sign	Frequency	Service Suspension Date¹
WHG747	Block B	No service since May 2010
WHG711	Block B	No service since 2008

¹ See Limited Joint Stipulation Between EB and Maritime, filed May 31, 2012

Category C: Stations For Which Maritime Has Not Confirmed Earlier Operation

- Was this facility operating and offering any type of service between Maritime's acquisition in 2005 and the Service Suspension Date? If so, what were the dates of operation? If not, why not?
- Have operations resumed? If not, why not?

Call Sign	Frequency	Service Suspension Date ²	Reason for Suspension ³
WHG705	Block B	April 2010	Utilities disconnected
WHG706	Block B	May 2009	Utilities disconnected
WHG707	Block B	2005	Lost tower or site
WHG713	Block B	June 2010	Utilities disconnected
WHG716	Block B	September 2010	Utilities disconnected
WHG717	Block B	August 2010	Utilities disconnected
WHG718	Block B	April 2010	Utilities disconnected
WHG722	Block B	May 2011	Lost tower or site
WHG724	Block B	January 2011	Utilities disconnected
WHG727	Block B	May 2010	Utilities disconnected
WHG728	Block B	August 2010	Utilities disconnected
WHG729	Block B	December 2010	Utilities disconnected
WHG730	Block B	September 2010	Utilities disconnected
WHG731	Block B	March 2010	Utilities disconnected
WHG732	Block B	March 2010	Utilities disconnected
WHG736	Block B	October 2010	Utilities disconnected
WHG738	Block B	February 2010	Utilities disconnected
WHG739	Block B	August 2011	Lost tower or site
WHG740	Block B	January 2010	Utilities disconnected
WHG742	Block B	May 2010	Utilities disconnected
WHG744	Block B	May 2010	Utilities disconnected
WHG745	Block B	2010	Lost tower or site
WHG748	Block B	June 2010	Utilities disconnected
WHG749	Block B	March 2010	Utilities disconnected
WHG753	Block B	October 2009	Lost tower or site
WHG754	Block B	2011	Lost tower or site

² See Limited Joint Stipulation Between EB and Maritime, filed May 31, 2012

³ See Maritime's Errata and Additional Information Regarding Amended and Further Supplemental Response to Interrogatories, filed March 19, 2012.

TRANSCRIPT OF PROCEEDINGS

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of:

Maritime Communications/Land Mobile, LLC et
al.

For commission consent to assignment of various
authorizations in wireless radio service

EB Docket No. 11-71

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FCC-DOCS

ORIGINAL

DATE OF HEARING: May 22, 2012 VOLUME: 5

PLACE OF HEARING: WASHINGTON, D.C. PAGES: 520-675

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1323 RHODE ISLAND AVENUE, NW
WASHINGTON, D.C. 20005
TELEPHONE (202) 234-4433

1 JUDGE SIPPEL: That is right.

2 Some --

3 MR. KELLER: We've given
4 everything we have.

5 JUDGE SIPPEL: I don't like that
6 answer.

7 MR. KELLER: Well, we can't give
8 more than we have.

9 JUDGE SIPPEL: Well, I don't think
10 that you tried hard enough to get all of the
11 information she needs. I can't believe that
12 you have licenses to stations and nobody knows
13 anything about it.

14 MR. REARDON: Your Honor, that's
15 the truth.

16 JUDGE SIPPEL: All right. Well,
17 if that's the truth, then that's the truth.
18 That might be. But I think it's going to be
19 your problem. It's not going to be the
20 Bureau's problem.

21 MR. HAVENS: Your Honor, could I
22 make a few more points on the long

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1 presentation by Mr. Keller and Ms. Kane on
2 this construction and operation issue?

3 JUDGE SIPPEL: Well, I guess you
4 can. I will let you do it, but I'm not going
5 to make anybody stay around for it. We'll
6 hear it on the record.

7 MR. HAVENS: Sure. Thank you.

8 One of the points that Mr. Keller
9 asserted is that the construction has been
10 adjudicated. That is not correct. I know all
11 of these proceedings. I'll be glad to show
12 you.

13 There has never been a showing by
14 either Maritime or Mobex or any of the
15 predecessors that they know anything at all by
16 any construction deadline.

17 Construction does not mean an
18 operating station. It means they built it
19 with equipment and in the case of --
20 interconnect at the construction deadline.

21 Mr. Keller also made a long
22 argument about the geographic licenses that

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1 Maritime has are subject to some of the
2 site-based licenses. That presupposes that
3 there is a definition of the coverage area of
4 the site-based licenses.

5 The Wireless Bureau has issued to
6 Maritime two orders that Maritime turn over to
7 SkyTel entities because we hold the geographic
8 licenses in most -- in large part of the
9 country subject to the Maritime site-based
10 licenses.

11 But under FCC rules 80.385B, we
12 have the right -- according to two orders from
13 down at the Wireless Bureau, we have the right
14 to get from Maritime these details on its
15 actual operating site-based stations so that
16 we know how we can use our geographic spectrum
17 up to the limits of its F-5050 contour. We
18 can't determine the F-5050 contour without
19 those details.

20 Maritime counsel has written back
21 to us several times in its documents in our
22 New Jersey litigation that we will not

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1 provide, Maritime will not give us, those
2 details.

3 The issue is that Maritime cannot
4 state that only its geographic licenses are
5 subject to the site-based licenses. That is
6 all. Those site-based licenses are in the
7 middle. Many of them are in the middle of my
8 companies' geographic licenses. And we're
9 being barred from using our geographic
10 licenses around the country for that reason.

11 And, plus, there are some on the
12 borders between the geographic licenses that
13 my company holds and Maritime holds. Some of
14 their site-based station coordinates are near
15 the borders. And we can't tell, nor can
16 Maritime, how that site-based license affects
17 the geographic licenses, ours and theirs,
18 until they produce evidence and give it to us
19 of what they are actually operating.

20 Now, if they are not operating at
21 all and they don't have any evidence of
22 construction and, yet, they are trying to

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1 maintain those stations, the whole thing just
2 breaks apart. The whole purpose of the
3 site-based versus the incumbent breaks apart.
4 I mean, that gets back to the issue of why
5 does Maritime not have any evidence of the
6 construction?

7 It answered that. It said the
8 information that it had when it bought the
9 stations from the licenses and the physical
10 stations from Mobex, those documents were --
11 Maritime has stated that it was satisfied
12 looking at those documents of construction and
13 operation. It was satisfied. It chose not to
14 keep those documents. Let them remain with
15 Mobex.

16 Mobex put them in storage, didn't
17 pay the storage fee. Mr. Keller testified
18 that he believed that his company -- his
19 client believed that it was in storage. All
20 the client had to do throughout this whole
21 hearing or at any time, you know, since
22 Maritime bought these, all it had to do is

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1 make one phone call to the storage company,
2 whose name they knew, to find out if those
3 documents were still there.

4 Those are the 100 boxes we're
5 getting.

6 JUDGE SIPPEL: Are you finished?

7 MR. HAVENS: Yes, sir.

8 JUDGE SIPPEL: Okay. Hold on a
9 second. We've got a question.

10 MR. PLACHE: From Pinnacle's --

11 JUDGE SIPPEL: Yes. Pinnacle's
12 counsel. Yes, sir. Say your name again, sir.

13 MR. PLACHE: Matthew Plache.

14 JUDGE SIPPEL: All right. Thank
15 you.

16 MR. PLACHE: From the standpoint
17 of Pinnacle Wireless and its concerns,
18 Pinnacle is concerned about station WRV374.
19 And we would want to make sure that any
20 information in those 100 boxes relevant to
21 construction of WRV374 is being preserved.

22 JUDGE SIPPEL: WRV374?

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1 MR. PLACHE: Three seventy-four.

2 JUDGE SIPPEL: Where is that
3 station located?

4 MR. PLACHE: Up and down the East
5 Coast. The Pinnacle Wireless is using it in
6 New Jersey to operate its system for the
7 turnpike authority and for the Meadowlands.

8 JUDGE SIPPEL: I remember reading
9 that story as I was going to go drive up the
10 turnpike.

11 MR. PLACHE: We don't have
12 information on the original construction 20
13 years back.

14 JUDGE SIPPEL: You don't?

15 MR. PLACHE: We don't because
16 there is no way we would have information on
17 that. We know that a company called
18 Regionette owned the license at one point and
19 actually was the tenant paying for the lease
20 who was listed as the lessee at one of the
21 sites that as operating under that license.
22 So we know that Regionette was operating just

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1 based on that information.

2 JUDGE SIPPEL: But does this have
3 anything to do with anything that Mr. Havens
4 has, any of his geographic licenses?

5 MR. PLACHE: Apparently Mr. Havens
6 holds the geographic license for part of the
7 coverage in New Jersey.

8 JUDGE SIPPEL: Is that right, Mr.
9 Havens?

10 MR. HAVENS: One of my companies
11 has the --

12 MR. PLACHE: Actually, not Mr.
13 Havens. One of his companies that he is not
14 acting as counsel for.

15 JUDGE SIPPEL: Well, but --

16 MR. HAVENS: Look, I represent my
17 companies in the licensing matters before the
18 FCC. That is what you are asking about. I
19 can certainly address that.

20 JUDGE SIPPEL: Well, as a fact
21 witness, not as a lawyer and not as an expert.

22 MR. HAVENS: Fine. You know, the

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1 issue here is Maritime issue G. We have gone
2 over these boxes.

3 JUDGE SIPPEL: Are you going to
4 answer? Wait a minute. Now, wait a minute.
5 Mr. Plache has a question or he made a point
6 about station WRV374 in the New Jersey
7 geographic area.

8 MR. HAVENS: Sure. Yes.

9 JUDGE SIPPEL: Do you have
10 anything to do with that station?

11 MR. HAVENS: Yes. One of my
12 companies holds the A block, geographic, and
13 CF license for the Northeast, which extends
14 down into roughly half of New Jersey. And in
15 that northern half of New Jersey and along the
16 border, Maritime has certain stations under
17 its site-based license WRB374. So Pinnacle
18 counsel is correct to that extent.

19 JUDGE SIPPEL: Okay. So Maritime
20 has the site-based and you have the
21 geographic. Now, what is the name of the
22 company that you say that has that?

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1 MR. HAVENS: Let me think. I
2 think -- you know, I would have to look that
3 up because we have one -- we have the A block
4 and the B block in the Northeast. And one of
5 them is Environmental, LLC. I believe that
6 has the B block. The other one I believe is
7 Intelligent Transportation and Monitoring
8 Wireless, LLC. That has A block. I'd have to
9 verify that.

10 JUDGE SIPPEL: Well, I got you
11 stumped on one. Go ahead. You verify and let
12 us know. Email would be fine.

13 MR. HAVENS: Okay. Email is fine.
14 I will send an email, and I will verify.

15 In terms of the preservation of
16 the boxes, that is our first goal. And we are
17 doing that in a way that -- you know, we are
18 not going to touch the boxes. My companies
19 and my counsel will have a bonded third party
20 contractor to take all action with the storage
21 company to scan and preserve on a CD all of
22 the boxes, all of the contents as they are at

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1 this time so that all of the parties will be
2 assured that the evidence is exactly as it has
3 been.

4 JUDGE SIPPEL: I am going to ask
5 you this. Actually, I am going to require it.
6 I want to get from you a pre-status report on
7 all business about those documents by the
8 31st. I'm not saying you have to have
9 everything done. I'm just saying let me know
10 what actually is the status of getting things
11 done at that point.

12 And just again you can do it by
13 email. Send copies to all of the other
14 parties and lawyers. Okay?

15 MR. HAVENS: Yes, sir.

16 JUDGE SIPPEL: All right. And let
17 me ask you one other question. You cited to
18 a rule, 80. something.

19 MR. HAVENS: Yes, 80.385B. And
20 that rule, in essence, provides that the
21 geographic licensee will provide a defined
22 protected area around a co-channel or same

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1 channel site-based station.

2 And the FCC Wireless Bureau ruling
3 on that -- in fact, Maritime asked for a
4 declaratory ruling that the Bureau permit its
5 site-based stations to be protected from the
6 co-channel geographics surrounding licensee by
7 the maximum assumed parameters permitted under
8 the granted license.

9 Mr. Stone of the Bureau ruled that
10 that is not correct, that a site-based
11 licensee is entitled to protection of its
12 actual operating station.

13 JUDGE SIPPEL: Do you have a
14 written ruling on that?

15 MR. HAVENS: Yes, sir, two
16 rulings. And the last ruling was not
17 challenged by Maritime in its final ruling.
18 I'll be glad to identify those and provide
19 copies.

20 JUDGE SIPPEL: That would be -- I
21 would like those rulings, yes. Are they in
22 the form of a letter ruling or an order?

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1 MR. HAVENS: I believe the
2 declaratory ruling is labeled a letter ruling.
3 It did have lettering clauses at the end. And
4 the order on reconsideration was an order on
5 reconsideration.

6 JUDGE SIPPEL: I would like to get
7 those as soon as you can.

8 MR. HAVENS: Yes. I will provide
9 those.

10 JUDGE SIPPEL: With copies again
11 to everybody. You can send it by email. But
12 if you have them handy, it would do me a big
13 service if you would just get them to me.

14 MR. HAVENS: I will do that right
15 away.

16 JUDGE SIPPEL: Thank you, sir.

17 MR. PLACHE: Your Honor, I believe
18 the two licensees are represented by Mr.
19 Jackson.

20 JUDGE SIPPEL: The two --

21 MR. PLACHE: The two licensees
22 mentioned, the two companies mentioned as

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1 entities.

2 JUDGE SIPPEL: Well, give me the
3 names of those licensees. We're talking about
4 WRV374. What else are you talking about?

5 MR. PLACHE: That's what I was
6 talking about.

7 MR. HAVENS: I'm only responding
8 to the Judge's request to provide status. I'm
9 not going to make an argument.

10 JUDGE SIPPEL: That's great.
11 Thank you, Mr. Havens. We're making progress.

12 Mr. Jackson?

13 MR. JACKSON: Yes. Just two very
14 brief items, Your Honor.

15 JUDGE SIPPEL: Yes, sir.

16 MR. JACKSON: My clients would
17 strongly support the position of the Bureau on
18 the discovery extension. That proposal we
19 would support also.

20 And, second, Mr. Plache indicated
21 that apparently his client did some due
22 diligence when they were going to release this

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1 spectrum. And we're looking for some
2 documents.

3 My clients have some outstanding
4 discovery to the applicants about certain
5 questions related to issue G. And I believe
6 they have not been responded to. And I don't
7 think they have been directed to.

8 At some point, Your Honor, we
9 would like you to direct them to respond.

10 JUDGE SIPPEL: Was this in a
11 discovery interrogatories or --

12 MR. JACKSON: Yes. Last fall, I
13 believe, Your Honor, well before I became
14 involved in this case.

15 JUDGE SIPPEL: Could you resurrect
16 it and send me a copy?

17 MR. JACKSON: Yes, Your Honor.

18 JUDGE SIPPEL: It's on it, I know,
19 but it would help.

20 MR. JACKSON: Yes, Your Honor.

21 JUDGE SIPPEL: I have limited
22 resources in my office I'm sure you know.

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1 Okay. Okay.

2 Mr. Havens, you are cooking with
3 gas, let me tell you.

4 MR. HAVENS: I appreciate it.

5 JUDGE SIPPEL: Okay. Let's keep
6 it at that. Five months is what I going to --
7 is going to be the interim extension for
8 discovery. And as I get further and further
9 down the road and further status reports, you
10 know, that date is going to be refined. Right
11 now it's a maximum of five months, but asap is
12 the standard.

13 MS. KANE: Your Honor?

14 JUDGE SIPPEL: Yes, ma'am?

15 MS. KANE: When we proposed the
16 original 4 months, we didn't expect we would
17 be getting 100 boxes of documents. The 4
18 months would have been difficult with the 12
19 boxes we got from Maritime. So to add another
20 100 boxes potentially, we have no idea whether
21 any of that is relevant documents that we
22 would have to still now go through to

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1 determine if they are even responsive to
2 anything in our requests could take
3 considerable time. So I think we would be
4 looking for at least a minimum of six months
5 of discovery to have to go through those.

6 I mean, you're looking at the
7 trial team. It's two people. So to go
8 through 100 boxes of documents when we haven't
9 had anybody go through them to determine if
10 they are even relevant to this hearing --

11 JUDGE SIPPEL: All right. But
12 five months is what we -- I'll go to six
13 months, and that's it. I don't mean to say
14 that you're going to live or die with six
15 months. I'm saying you are going to have to
16 come in and show me very good reason why it
17 has to be beyond six months. Six months is a
18 pretty decent time.

19 MS. KANE: We understand, Your
20 Honor, but we don't even have the 100 --

21 JUDGE SIPPEL: That's why I'm
22 saying. I mean, I'm saying I've got to set

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Subject: Fw: EB 11-71 (FCC 12M-19)

Date: Tuesday, March 13, 2012 1:28:31 AM PT

From: Warren Havens <warren.havens@sbcglobal.net>

To: Patricia Ducksworth <Patricia.Ducksworth@fcc.gov>

CC: Richard Sippel <Richard.Sippel@fcc.gov>, Jimmy Stobaugh <jstobaugh@telesaurus.com>, Pamela Kane <Pamela.Kane@fcc.gov>, Brian Carter <brian.carter@fcc.gov>

Ms. Ducksworth, Mr. Sippel,

I will not file this email in the docket, and this is not a pleading in this hearing, since I have been excluded. However, after the exclusion, you communicated with me, below, and thus I respond.*

I believe you erred in sending the attached to me with your email below, since Judge Sippel found that I cannot represent myself as an individual party in this hearing. That is in two Orders last Friday.

It also lead to my being excluded from the status conference of yesterday, Monday.

In addition, my companies' new counsel, Robert H. Jackson, with the Communications Law Group in Virginia, who just had eye surgery and could not attend yesterday's status conference in person but asked to attend by phone, with me on an extension line, was also excluded.

I don't want to accept partial information from your offices, or be on "listen-only" status, since that muddies the issues of law involved, for my appeal of the exclusion to the Commission or court.**

This email does not involve SkyTel legal entities in this Hearing.

Since I have in some matters cooperated with the Enforcement Bureau in this Hearing, I copy them here.

This not confidential or privileged.

- Warren Havens

- - - -

* I also exercise First Amendment rights here. Generally, the government need not listen or respond to such exercise, but it cannot attempt to chill it or sanction it but for very narrow exceptions not involved here.

** I believe the exclusion is improper, highly prejudicial, and may be reversible error.

The Supreme Court noted that "[i]n the federal courts, the right of self-representation has been protected by statute since the beginnings of our Nation. Section 35 of the Judiciary Act of 1789, 1 Stat. 73, 92, enacted by the First Congress and signed by President Washington one day before the Sixth Amendment was proposed, provided that 'in all the courts of the United States, the parties may plead and manage their own causes personally or by the assistance of counsel.'" *Faretta v. California*, 422 U.S. 806, 813 (1975). These rights are not limited by FCC regulations or in the Communications Act, nor can they be.

It is my work, pro se, including as an individual (I was always a party as an individual for sound Article III standing reasons) that is the foundation of the Hearing: see FCC 11-64 and the cited petitions by me for my companies and I. But now I am excluded by exercise of discretion. Compare that to the status and lax treatment of MCLM in this hearing and at points past.

The law is not so complicated that us citizens can not deal with it. The problem is more often that the government will not. This proceeding, going back over a decade in origin, demonstrates that.

If I am reinstated as a party on appeal or mandamus, I will seek proper relief as to actions that have taken place in this Hearing, and as to any interim or final decisions, during my exclusion from the Hearing.

I intend to use legal counsel in administrative and Constitutional law, for advice and/or representation, for the appeal and this potential related relief- but I do not have to. Maintaing pro se rights is essential, including to have healthy relations with counsel, to fill in gaps of counsel is relieved or withdraws, to save money when needed, and for other good cause. Constitutionally protected rights are not subject to extrinsic good cause in their

exercise and defense, but there are many apparent ones in this case.

///

----- Forwarded Message -----

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Sent: Monday, March 12, 2012 12:59 PM

Subject: EB 11-71 (FCC 12M-19)

Pat Ducksworth

FCC

Office of Administrative Law Judges

202-418-2243

CERTIFICATE OF SERVICE

I, the undersigned, certify that on October 2, 2012, I caused a true copy of the foregoing filing in FCC docket 11-71 to be served by USPS first class mail (and email as noted) to:

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